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10/785,214	02/24/2004	Robert Lee Burchette JR.	30924-001	8815
7590 John B. Hardaway, III NEXSEN PRUET, LLC P.O. Box 10107 Greenville, SC 29603				
EXAMINER				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: ROBERT LEE BURCHETTE JR

Application No. 10/785,214
Technology Center 2600

Mailed: March 27, 2009

Before DEBORAH L. PERRY *Supervisory Paralegal Specialist, Review Team*
PERRY, *Supervisory Paralegal Specialist, Review Team*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 16, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF
STATUS OF CLAIMS

A review of the file finds that the status of the claims as provided in the Appeal Brief filed February 12, 2008, is not consistent with the Appeal Brief “Claims Appendix” (pg. 19) or the replacement Appeal Brief filed March 4, 2008. Specifically, the status of Claim 30 has not been addressed.

Correction of the status of all claims is required.

SUMMARY OF CLAIMED SUBJECT MATTER

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters.< While reference to page and line number of the specification ~~**>requires<~~ somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 5 and 6 of the Appeal Brief filed dated February 12, 2008, is deficient, because it does not separately map independent claims 30 and 38 to the specification. Correction is required.

CLAIMS APPENDIX

The Claims Appendix’s filed February 12, 2008 and March 4, 2008, are not consistent with the last entered Amendment of the Claims dated March 9, 2006.

In the Appendix of Claims dated February 12, 2008, the Appellant attempts to amend the Claims and present the amended claims as the claims on appeal. This appears to have gone unnoticed; however, a Notice of Appeal Brief Non-Compliance was issued on February 26, 2008, advising the Appellant that a clean set of Claims without the markings needed to be filed.

Appellant filed a replacement Claims Appendix on March 4, 2008. However, the replacement Claims Appendix remains defective, because the claims are still not consistent with the last entered Amended dated March 9, 2006.

It should be noted that any amendments to the claims must be filed in a separate paper in and of itself and not as part of the Appeal Brief, Claims

Appendix.

Correction to the Appeal Brief, Claims Appendix is required.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) hold the Appeal Brief, filed February 12, 2008, defective, as identified above;
- 2) hold the Appeal Brief, Claims Appendix filed March 4, 2008, defective;
- 3) notify Appellant to file a Supplemental Appeal Brief, addressing
 - a) the Status of Claims (Claim 30);
 - b) the Summary of Claimed Subject Matter; and
 - c) the Claims Appendix,addressing each issue, as identified above, and required under 37 CFR §41.37(c)(1)(v);
- 4) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief; and
- 5) for such further action as may be appropriate.

Application S.N. 10/785,214

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DP/dw

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